



RE-APPEAL BRIEF REQUEST FOR REVIEW

In the Final Office Action dated December 27, 2007 claims 1-13 were finally rejected.

The Examiner rejected claims 1-13 under 35 U.S.C. §102(b) as being anticipated by Page (US Patent No. 6,214,632). Claims 1 and 7 are the only independent claims in the application.

It is submitted that the Examiner has not provided a *prima facie* case in support of the rejections of the claims since Page fails to teach at least two features of the claims:

1. Page fails to teach an abrasive pad having an abrasive surface as recited in claims 1 and 7.
2. Page fails to teach a separate ring, as recited in claims 3 and 7.

1. Page fails to teach an abrasive pad having an abrasive surface as recited in claims 1 and 7

In an Office Action dated July 11, 2007, the Examiner stated that Page teaches the abrasive surface of claim 1 at col. 8, lines 47-67; col. 9, line 50 to col. 10, line 6 and Fig. 3C. In the response filed on October 4, 2007, Applicants disagreed with the Examiner and argued that Page not only does not teach an abrasive surface, it actually teaches away from using such surface.

Turning first to the section at col. 8, lines 47-67, there is no mention of any possible abrasive properties of the outer layer, which applicants assume the Examiner has identified as the abrasive layer. In fact the entire section preceding the quoted section mentions that the outer layer is soft no less than five times and also that the layer is conforming. Neither of these characteristics is consistent with an "abrasive" surface. The fact that it removes "low tension substances from the skin" does not make the surface abrasive, since these substances are removed because the materials have a low surface tension (col. 8, lines 56-67). The patent describes the pad as removing these substances "without removing makeup" (col. 8, line 2) and for "applying new makeup" col. 8, line 3. Neither of these function could conceivably be performed with an abrasive pad.

Furthermore, the section cited by the Examiner gives the hardness measured using Shore A 90 which is the measurement scale used for soft elastomers and medium rubbers as well as for felt.

Turning to the section at col. 9, line 50 to col. 10, line 6, this section continuously refers to the "porous membrane" as being soft and conformable (see for example col. 10, lines 51). In fact, the invention is contrasted with the prior art which is said to be "relatively hard, non-conformable, stiff and inflexible and abrasive." (col. 10, lines 63-64). This is emphasized again at the later portion of the cited section at col. 11, lines 1-3, referring to prior art pads.

In response to Applicants' arguments, the Examiner repeated his rejection in a Final Office Action dated December 27, 2007 and attached a definition of the term "abrasive" from Merriam-Webster Online Dictionary. According to the Examiner, the term is defined as "a substance used for abrading, smoothing or polishing". However, Applicants have reviewed the definition attached to the office action which defines the term abrasive as "a substance (as emery or pumice) used for abrading, smoothing, or polishing" (emphasis added). Clearly, the Examiner ignored the important part of the definition provided by him according to which abrasive is a substance like emery or pumice, which is very far from being a "soft" surface, as described in Page.

Moreover, the definition provided by the Examiner is of a noun, however, the claims in the application recite an abrasive surface, where the term abrasive is used as an adjective. Applicants attached a copy of the definition of the term abrasive used as an adjective from the Merriam Webster Dictionary, which defines the adjective as follows: "1: tending to abrade 2: causing irritation". The verb abrade is further defined as "1 a: to rub or wear away esp. by friction: ERODE b: to irritate or roughen by rubbing 2: to wear down in spirit..."

Thus, the term abrasive is known in the art and in the English language in general as rubbing away. Clearly, the "soft" surface of Page does not meet this definition. Thus, the prior art fails to teach an abrasive surface as required by independent claims 1 and 7.

2. Page fails to teach a separate ring, as recited in claims 3 and 7

According to the Examiner, Fig. 8B of Page shows a ring formed by a membrane 104 which surrounds the backing material "...such that there exists no potentially abrasive edge", see Page col. 13, lines 3-4.

Applicants respectfully disagree with the Examiner. First and foremost, the claim requires a *separate* ring. Even assuming that the turned up edge of the laminate 104 of Fig. 8B could be considered "a ring," which it is not, it is certainly not a separate ring.

Page's Fig. 8B shows a membrane which may have an abrasive *edge* caused by the laminations thereof. Page solves the problem of avoiding the abrasive edge (i.e., the laminated edge between the front soft layer and the backing) harming the skin, by exposing the skin to the same surface (soft layer) as the face. Clearly this surface is not abrasive otherwise the edge of the pad would still be abrasive. What Page is trying to avoid is not the edge of the soft surface which forms both the front face and the exposed face of the turned up portion, but the edge of the layer behind that surface touching the skin. Page does not need a separate non-abrasive edge since a non-abrasive surface is already at hand, namely the outer surface of the laminate which contacts the skin.

This is in contrast with what is claimed in claims 1 and 7 of the application, which recite "a separate ring of elastomer or sponge material surrounding the backing material to reduce contact between the edge of the abrasive surface and a surface being abraded." (emphasis added). Thus, the contact between the edge of the abrasive surface and a surface being abraded is reduced by way of a separate ring. No such ring is present in Page and none is needed.

Clearly, the Examiner erred in his rejection and in not accepting Applicants' arguments filed on October 4, 2007.

Applicants believe that the Final Rejection of December 27, 2007 is not proper and without basis, specifically that the rejections arise from the Examiner not appreciating the essence of the cited art and ignoring the dictionary definitions brought up by the Examiner himself. Applicants believe that independent claims 1 and 7 are neither anticipated by nor rendered obvious over the cited art.

Since independent claims 1 and 7 are patentable over the cited art, claims 1 and 7 and claims 2-6 and 8-13, respectively dependent therefrom, are in condition for allowance.

Applicants respectfully request that the Panel issue a Notice of Allowance in this case.

Respectfully Submitted,



Martin D. Moynihan
Registration No. 40,338

Date: April 7, 2008



A GENUINE MERRIAM-WEBSTER

The name *Webster* alone is no guarantee of excellence. It is used by a number of publishers and may serve mainly to mislead an unwary buyer.

A *Merriam-Webster*® is the registered trademark you should look for when you consider the purchase of dictionaries or other fine reference books. It carries the reputation of a company that has been publishing since 1831 and is your assurance of quality and authority.

Copyright © 1988 by Merriam-Webster Inc.

Philippines Copyright 1988 by Merriam-Webster Inc.

Library of Congress Cataloging in Publication Data
Main entry under title:

Webster's ninth new collegiate dictionary.

Includes index.

I. English language—Dictionaries. I. Merriam-
Webster Inc.

PE1628.W5638 1988 423 87-24041

ISBN 0-87779-508-8

ISBN 0-87779-509-6 (indexed)

ISBN 0-87779-510-X (deluxe)

Webster's Ninth New Collegiate Dictionary principal copyright 1983

COLLEGIATE trademark Reg. U.S. Pat. Off.

All rights reserved. No part of this book covered by the copyrights hereon may be reproduced or copied in any form or by any means—graphic, electronic, or mechanical, including photocopying, taping, or information storage and retrieval systems—without written permission of the publisher.

Made in the United States of America

2627282930RMCN88

46 above • absorb

above *n.* *pl* **above** (13c) 1 *a*: something that is above *b*; *b*: a person whose name is written above *2* *a*: a higher authority *b*; **HEAVEN** *usage* Although still objected to by some, the use of *above* as a noun in sense *la* (none of the *above*) *{the above is Theseus's opinion — William Blake}* and as an adjective (without the *above* reserve — O. W. Holmes †1935) *{I was brought up on the above words — Viscount Montgomery}* has been long established as standard.

above adj (1776) : written or discussed higher on the same page or on a preceding page *usage* see **ABOVE**

above all (14c) : before every other consideration : **ESPECIALLY**

above-board *\a-'bov-,bō'(ə)rd* *adv* [fr. the difficulty of cheating at cards when the hands are above the table] (1616) : in a straightforward manner : **OPENLY**

aboveboard adj (1648) : free from all traces of deceit or duplicity

above-ground *\a-'bōv-,grānd* *adj* (1617) 1 : located or occurring on or above the surface of the ground *2* : existing, produced, or published by or within the establishment (*~ movies*)

ab ovo *\ab-'ōv-(y)vō* *adv* [L. lit., from the egg] (1586) : from the beginning

abracada-dra *\ab-rā-kā-'dārā* *n* [LL] (ca. 1565) 1 : a (magical)

charm or incantation *2* unintelligible language

abrad-ant *\'brād-'ānt* *n* (1877) : **ABRASIVE**

abrade *\a-'brād* *vb* **abrad-ed**; **abrading** [L. *abradere* to scrape off, fr. *ab-* + *rader* to scrape — more at *RATE*] *v* (1677) 1 *a*: to rub or wear away esp. by friction : **ERODE** *b*: to irritate or roughen by rubbing *2* : to wear down in spirit : **IRRITATE, WEAR-Y** *v*: to undergo abrasion

— abrad-able *\a-'brāb'l* *adj* — *abrad'er n*

Abra-ham *\'a-brā-'ham* *n* [LL, fr. Gk. *Abrahām*, fr. Heb. *'Abrahām*] : an Old Testament patriarch and founder of the Hebrew people

abras-ion *\a-brāz̄-hān* *n* [ML *abrasio*; *abrasio*, fr. L *abrasus*, pp. of *abradere*] (1656) 1 *a*: a wearing, grinding, or rubbing away by friction *b*: **IRRITATION** *2* : an abraded area of the skin or mucous membrane

abra-sive *\a-'brā-siv, -ziv* *n* (1853) : a substance (as emery or pumice) used for abrading, smoothing, or polishing

abrasive adj (1875) 1 : tending to abrade *2* : causing irritation (<~ manners) — *abra-sively* *adv* — *abra-siveness n*

abre-a-tion *\ab-rē-'āshōn* *n* [part trans. of G *abreagere* catharsis, fr. *ab* (fr. OHG *aba*) off, away + *reaglerung* reaction, fr. L *reagere* to react — more at *OF. REACT*] (1912) : the expression and emotional discharge of unconscious material (as a repressed idea or emotion) by verbalization esp. in the presence of a therapist — *ab-react* *\'aktr* *vb* *abreast* *\a-'brēst* *adv* or *adj* (15c) 1 : beside one another with bodies in line (columns of men five *~*) *2* : up to a particular standard or level esp. of knowledge of recent developments *3* keeps *~* of the latest trends

abridge *\a-'brīj* *vt* **abridged**; **abridg-ing** [ME *abreggen*, fr. MF *abregier*, fr. LL *abbreviare*, fr. L *ad-* + *brevis* short — more at *BRIEF*] (14c) 1 *a*: the archaic : **DEPRIVE** *b*: to reduce in scope : **DIMINISH** (attempts to ~ the right of free speech) *2* : to shorten in duration or extent (modern transportation that ~s distance) *3* : to shorten by omission of words without sacrifice of sense : **CONDENSE** *syn* see **SHORTEN** — *abridg'er n* **abridg-ment** or **abridgement** *\a-'brīj-mēnt* *n* (15c) 1 : the action of abridging : the state of being abridged *2* : a shortened form of a work retaining the general sense and unity of the original

abroach *\a-'brōch* *adv* or *adj* (14c) 1 : in a condition for letting out a liquid (as wine) (a cask set *~*) *2* : in action or agitation : **ASTIR** (mischiefs that I set *~* — *Shak.*)

abroad *\a-'brōd* *adv* or *adj* (13c) 1 : over a wide area : **WIDELY** *2* : away from one's home *3* : beyond the boundaries of one's country *4* : in wide circulation : **ABOUT** *5* : wide of the mark : **ASTRAY**

ab-ro-gate *\ab-'rōgāt* *vt* **-gat-ed**; **-gat-ing** [L. *abrogatus*, pp. of *abrogare*, fr. *ab-* + *rogare* to ask, propose a law — more at *RIGHT*] (15c) 1 : to abolish by authoritative action : **ANNULL** *2* : to do away with *syn* see *NULLIFY* — **ab-roga-tion** *\ab-'rōgā-shān* *n*

abrupt *\a-'brōpt* *adj* [L. *abruptus*, fr. pp. of *abrumper* to break off, fr. *ab-* + *rumpere* to break — more at *REAVE*] (1591) 1 *a*: occurring without warning : **UNEXPECTED** (*~ weather changes*) *b*: **unceremoniously** curt (*an ~ manner*) *c*: marked by sudden changes in subject matter : **DISCONNECTED** *2* *a*: broken off *b*: suddenly terminating as if cut or broken off (*~ plant filaments*) *3*: rising or dropping sharply as if broken off (*a high ~ bank bounded the stream*) *syn* see *Precipitate, Steep* — *abrupt-ly* *\a-'brōp-(t)lē* *adv* — *abrupt-ness* *\a-'brōp(t)-nēs* *n*

abrup-tion *\a-'brōp-shān* *n* (1606) : a sudden breaking off or away

ABS *\ā-'bēs* *n* [acrylonitrile-butadiene-styrene] (1966) : a tough

rigid plastic used esp. for automobile parts and building materials

ab-scess *\ab-'sēs* *n*, *pl* **ab-scesses** *\ab-'sēs-,ēz* *n* [L. *abscessus*, fr. *abs-* + *cedere* to go — more at *CEDE*] (1615) : a localized collection of pus surrounded by inflamed tissue — *ab-scessed* *\'sēst* *adj*

ab-scise *\ab-'sīz* *vb* **ab-scised**; **ab-scising** [L. *abscissus*, pp. of *abscindere* to cut — more at *CONCISE*] *v* (1612) : to cut off by abscission — *vi*: to separate by abscission

ab-scis-ic acid *\ab-'sīz-ik-, -sīs-* *n* [*abscission* (var. of *abscission*) + *-ic*] (1968) : a plant hormone $C_13H_{20}O_3$ that is widespread in nature and is made synthetically and that typically promotes leaf abscission and dormancy and has an inhibitory effect on cell elongation — called also *abscisin II*

ab-sci-sin *\ab-'sīz-sān, ab-'sīs-'n* *n* [*abscision* + *-in*] (1961) : any of a group of plant regulatory substances orig. found in young cotton bolls that tend to promote leaf abscission and inhibit various growth processes — compare *ABSCISIC ACID*

ab-sci-sa *\ab-'sīs-'sā* *n*, *pl* **abscissas** also **ab-sci-sae** *\-sēz* *n* [NL, fr. L. fem. of *abscissus*, pp. of *abscindere* to cut off, fr. *ab-* + *scindere* to cut — more at *SHEP*] (1694) : the horizontal coordinate of a point in a plane Cartesian coordinate system obtained by measuring parallel to the *x-axis* — compare *ORDINATE*

ab-sci-sion *\ab-'sīzh-an* *n* [L. *abscission*, *abscissio*, fr. *abscissus*] (15c) 1 : the act or process

of cutting off : **REMOVAL** *2* : the natural separation of flowers, fruit, leaves from plants at a special separation layer

ab-scond *\ab-'skānd*, *āb-'v* [L. *abcondere* to hide away, fr. *abs-* + *conde-re* to store up, conceal — more at *CONDIMENT*] (1565) : to depart secretly and hide oneself — *ab-sconder n*

ab-sence *\ab-'sāns(t)s* *n* (14c) 1 : the state of being absent *2* : a period of time that one is absent *3* : **WANT, LACK** (*an ~ of detail*) : inattention to present surroundings or occurrences (*~ of mind*)

— absent *\'ab-sānt* *adj* [ME, fr. MF, fr. L *absent-*, *absens*, pp. of *abe* to be absent, fr. *ab-* + *esse* to be — more at *is*] (14c) 1 : not present or attending : **MISSING** *2* : not existing : **LACKING** (*danger in a situation where power is ~* — M. H. Trytten) *3* : **INATTENTIVE, PREOCCUPIED** — *absent-ly* *adv*

ab-sent *\ab-'sēnt*, *\'ab-sēnt* *n* (15c) : to keep (oneself) away

ab-sent *\ab-'sānt* *prep* (1945) : in the absence of : **WITHOUT** — *ab-sent* *\ab-'sānt* *n* (1605) : one that is absent or that absents himself; *specif*: a proprietor that lives away from his estate or business

— absentee adj

ab-sentee ballot *n* (1932) : a ballot submitted (as by mail) in advance an election by a voter who is unable to be present at the polls

ab-sen-teism *\ab-'sān-tēz̄-izm* *n* (1829) 1 : prolonged absence of owner from his property *2* : chronic absence (as from work school); *also*: the rate of such absence

ab-sent-minded *\ab-sānt-'mīndēd* *adj* (1854) : lost in thought : unaware of one's surroundings or action : **PREOCCUPIED**; also : given absence of mind — *ab-sent-minded-ly* *adv* — *ab-sent-minded-ness n*

ab-sent without leave *adj* (ca. 1919) : absent without authority fr. one's place of duty in the armed forces

ab-sin-thie also ab-sinth *\ab-'sīn-thē* *n* [F. *absinthe*, fr. L *absinthium* Gk. *apsinthion*] (1612) 1 : **WORMWOOD** *2* : esp. a common European wormwood (*Artemisia absinthium*) *3* : a green liqueur flavored w wormwood or a substitute, anise, and other aromatics

ab-so-lute *\ab-'sō-lüt*, *\ab-'sō-lü* *adj* [ME *absolut*, fr. L *absolutus*, fr. pg *absolvere* to set free, *absolve*] (14c) 1 : *a*: free from imperfection — *PERFECT* *b*: free or relatively free from mixture : **PURE** (*< alcohol*) *c*: **OUTRIGHT, UNMITIGATED** (*an ~ lie*) *2* : being, governed by characteristic of a ruler or authority completely free from constitutional or other restraint *3* *a*: standing apart from a normal or unusual relation with other words or sentence elements (*the ~ structure this being the case in the sentence "this being the case, let go"*) *b* of an *adjective or possessive pronoun*: standing alone without modified substantive (*blind* in "help the blind" and *ours* in "your *v* and ours" are ~) *c* of a verb : having no object in the particular construction under consideration though normally transitive (*kill it looks could kill* is an ~ verb) *4* : having no restriction, exception, qualification (*an ~ proof*) *5* *a*: independent of arbitrary standard measurement *b*: relating to or derived in the simplest manner from the fundamental units of length, mass, and time (*~ electric units*) : relating to the absolute-temperature scale (*10° ~*) *7* : **FUNDAMENTAL, ULTIMATE** (*~ knowledge*) *8* : perfectly embodying the nature thing (*~ justice*) *9* : being self-sufficient and free of external influences or relationships (*an ~ term in logic* (*~ music*) *10* : measured or representing the distance from an aircraft to the ground or beneath — *absolute n* — *ab-solute-ness n*

absolute ceiling *n* (ca. 1920) : the maximum height above sea level at which an airplane can maintain horizontal flight under standard conditions — called also *ceiling*

absolute convergence *n* (ca. 1909) : convergence of a mathematical series when the absolute values of the terms are taken

absolute humidity *n* (ca. 1867) : the amount of water vapor present unit volume of air

ab-so-lutely *\ab-'sō-lüt-ē, -ē, -ēz̄* *adv* (14c) 1 : in an absolute manner or condition *2* : with respect to absolute values (*au ~ converges*)

absolute magnitude *n* (ca. 1902) : the intrinsic luminosity of a celestial body (as a star) if viewed from a distance of 10 parsecs

absolute pitch *n* (1864) 1 : the position of a tone in a standard independently determined by its rate of vibration *2* : the ability to recognize or sing a given isolated note

absolute scale *n* (ca. 1848) : a temperature scale based on absolute zero

absolute space *n* (ca. 1889) : **SPACE** *4b* *on absolute zero, esp* : temperature measured on a scale

absolute value *n* (1907) 1 : a nonnegative number equal in numerical value to a given real number (*6 is the absolute value of -6*) *2* : positive square root of the sum of the squares of the real and imaginary parts of a complex number

absolute zero *n* (1848) : a theoretical temperature characterized by complete absence of heat and equivalent to exactly -273.15 *-459.67°F*

ab-solu-tion *\ab-'sō-lü-shān* *n* (13c) : the act of absolving; *specif* remission of sins pronounced by a priest (as in the sacrament of *confession*)

ab-solu-tism *\ab-'sō-lüt-, -izm* *n* (1830) 1 *a*: a political theory absolute power should be vested in one or more rulers *b*: government by an absolute ruler or authority : **DESPOLOM** *2* : advocacy of absolute standards or principles *3* : an absolute standard or principle — *ab-solu-tist* *\-lüt-ist*, *n* or *adj* — *ab-solu-tistic* *\ab-'sō-lü-ti-stik* *adj*

ab-solu-tize *\ab-'sō-lüt-, -iz* *vt* *-ized; -iz-ing* (1919) : to make absolute : convert into an absolute

ab-solve *\ab-'zilv, -zōlv, -sōlv* *also without * *vt* **ab-solv** *solving* [ME *absolveren*, fr. L *absolvere*, fr. *ab-* + *solvere* to free more at *SOLVE*] (15c) 1 : to set free from an obligation or the consequences of guilt *2* : to remit (a sin) by *absolution* *syn* see *EXCUSE*

— ab-solv'er n

ab-sorb *\ab-'sōrb*, *\ab-'sōrb* *vt* [MF *absorber*, fr. L *absorbere* + *sorbere* to suck up] (15c) 1 : to take in and make part of an whole (the capacity of China to ~ invaders) *2* *a*: to suck up (a sponge ~s water) (charcoal ~s gas) (plant roots ~ wa

: to take in (convictions ~ed in youth) — M. R. Cohen) *c*: **CONSUME** (the fever ~ed her strength) *3* : to engage or engross (~ed in thought) *4* *a* (*1*): to receive without recoil or ech

